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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16 WAYMO LLC,  
17 Plaintiff,  
18 v.  
19 UBER TECHNOLOGIES, INC.,  
20 OTTOMOTTO LLC; OTTO TRUCKING LLC,  
21 Defendants.

Case No. 3:17-cv-00939-WHA

**UBER TECHNOLOGIES, INC.,  
OTTOMOTTO LLC, AND OTTO  
TRUCKING LLC'S  
ADMINISTRATIVE MOTION TO  
ALLOW SAMEER KSHIRSAGAR  
ACCESS TO CERTAIN MATERIAL**

Complaint Filed: February 23, 2017  
First Am. Compl. Filed: March 10, 2017  
Trial Date: October 2, 2017

1 Plaintiff Waymo LLC (“Waymo”), in its Motion for Preliminary Injunction, alleges that  
 2 former Waymo employee Sameer Kshirsagar—now an employee of Uber Technologies, Inc.  
 3 (“Uber”)—downloaded five allegedly confidential files from Waymo’s internal Google Drive  
 4 prior to resigning from Waymo. (Mot. Prelim. Inj. at 9, ECF No. 24.) Waymo has designated  
 5 these files “Attorneys Eyes Only,” limiting their distribution to outside counsel and a single,  
 6 designated in-house attorney. Waymo has also designated as AEO a transition memorandum  
 7 written by Mr. Kshirsagar upon his departure from Waymo. Uber is therefore unable to show  
 8 Mr. Kshirsagar the five files Waymo alleges he downloaded, as well as a memorandum he  
 9 prepared. Waymo has refused to agree that Uber be allowed to show Mr. Kshirsagar the  
 10 allegedly downloaded files, and has ignored counsel’s request to show Mr. Kshirsagar the  
 11 memorandum he drafted. (Declaration of Wendy Ray ¶¶ 2-4.)

12 As this court has recognized, Waymo “seeks sweeping provisional relief.” (Tentative  
 13 Order at 1, ECF No. 53.) Uber is hamstrung in its ability to prepare its response to the  
 14 preliminary injunction motion by its inability to communicate with Mr. Kshirsagar about the very  
 15 documents at issue—documents which, according to Waymo’s allegations, he has already seen  
 16 (and in some cases even written). It is crucial that Uber have access to all the information to  
 17 which it is entitled in order to prepare its defense as fulsomely as possible. This information  
 18 includes unhindered conversations with Mr. Kshirsagar about the files he allegedly downloaded  
 19 and the memorandum he wrote regarding his departure from Waymo. The need to have these  
 20 conversations is particularly critical given the severity of the relief requested and the limited time  
 21 Uber has to prepare its opposition brief. *See Julius M. Ames Co. v. Bostitch, Inc.*, 235 F. Supp.  
 22 856, 857 (S.D.N.Y. 1964) (holding that defendant was entitled to share interrogatory responses  
 23 containing a competitor’s trade secrets with defendant’s personnel, over competitor’s objections,  
 24 “insofar as it may be necessary...in order to prepare for and assist in the defense of the action.”).

25 In these circumstances, Waymo bears the burden of showing that the documents at issue  
 26 should be subject to a protective order provision preventing their disclosure to Mr. Kshirsagar. 8  
 27 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2043 (3d ed. Supp.  
 28 2017) (“It is well settled that there is no absolute privilege for trade secrets and similar

1 confidential information ... It is for the party resisting discovery to establish, in the first instance,  
2 that the information sought is within this provision of [ Rule 26(c)(1)(G)].”) Yet in its  
3 communications with Uber to date, Waymo has provided no support for its refusal to agree to the  
4 narrow disclosure requested.

5 In addition to being unsupported by law, Waymo’s position is unreasonable for the very  
6 same reasons this Court found Waymo’s previous refusal to let Uber disclose under-seal  
7 information to in-house counsel unreasonable. First, as the Court has recognized, “if the  
8 allegations in the complaint are true, then defendants already know the sensitive information.”  
9 (Tentative Order at 1.) The same logic applies here: if Mr. Kshirsagar downloaded the files as  
10 Waymo alleges, then he has already seen the material Waymo refuses to allow Uber to share with  
11 him now. Similarly, he has already seen the transition memorandum because he prepared it.  
12 Second, just as “defendants need [Waymo’s unredacted preliminary injunction papers] shared  
13 with in-house counsel to prepare their defense,” (*id.*), Uber needs to share these five files and the  
14 memorandum with Mr. Kshirsagar in order to prepare its defense. For example, counsel needs to  
15 discuss with Mr. Kshirsagar whether the alleged downloading occurred, the context surrounding  
16 such downloading (if any), and whether contents of any of the files were taken by him. Counsel  
17 also needs to discuss with Mr. Kshirsagar information in the memorandum regarding why he may  
18 have downloaded certain documents.

19 Courts in other circuits apply a balancing test in these circumstances that weighs the  
20 interest of the party seeking disclosure in discovering information necessary to prove its claims or  
21 defenses against the other party’s “interest in preventing a potential competitor from having  
22 access to its [trade secrets].” *Dow Corning Corp. v. Xiao*, 283 F.R.D. 353, 357 (E.D. Mich. 2012)  
23 (citing *R.C. Olmstead, Inc., v. CU Interface, LLC*, 606 F.3d 262, 269 (6th Cir. 2010)). *See also*  
24 *Bourdages v. Metals Ref., Ltd.*, No. 84 CIV. 743 (CSH), 1984 WL 665, at \*7 (S.D.N.Y. July 25,  
25 1984) (“if the needs of the requesting party are sufficiently compelling, disclosure should be  
26 ordered, even to a competitor of the disclosing party.”) (citing *Penthouse Int’l, Ltd. v. Playboy*  
27 *Enters., Inc.*, 663 F.2d 371, 391 (2d Cir. 1981); *Centurion Indus., Inc. v. Warren Steurer &*  
28 *Assocs.*, 665 F.2d 323, 326-7 (10th Cir. 1981)).

1 This balancing test is instructive here. As explained above, Uber has a compelling interest  
 2 in sharing these documents with Mr. Kshirsagar in order to effectively prepare its defenses.  
 3 Moreover, if Mr. Kshirsagar downloaded the files as Waymo alleges, then no competitive harm  
 4 could result from allowing him to view the files. Finally, Mr. Kshirsagar has read, signed, and  
 5 agrees to abide by the provisions of the Patent Local Rule 2-2 Interim Model Protective Order  
 6 that applies in this case. (Ray Decl., ¶ 5, Ex. 3 (Patent L.R. 2-2).) Uber's strong interest in the  
 7 limited disclosure it requests outweighs Waymo's unsubstantiated desire to withhold these files  
 8 from Mr. Kshirsagar.

9 In light of the foregoing, Uber respectfully requests that this Court order Waymo to allow  
 10 Uber to share the five files Waymo alleges Mr. Kshirsagar downloaded (listed at Willis Decl. ISO  
 11 Mot. Prelim. Inj., ECF No. 24-16 ¶¶ 6-11), as well as his transition memorandum (produced by  
 12 Waymo on March 22, 2017 at Bates no. WAYMO-UBER-00000414) with Mr. Kshirsagar. In the  
 13 alternative, Uber requests that this Court modify the Interim Protective Order to allow those  
 14 individuals who are alleged to have misappropriated trade secrets to view those documents that  
 15 Waymo alleges were taken by them, and to allow former Waymo employees to view their own  
 16 transition memoranda.

17  
 18 Dated: March 23, 2017

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19  
 20 By: /s/ Arturo J. González  
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